

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEFFERY K. ARMSTRONG and DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT ADMINISTRATION, Washington, DC

*Docket No. 98-1921; Submitted on the Record;
Issued October 6, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

On October 25, 1996 appellant, then a 37-year-old security programs specialist, filed an occupational disease claim alleging that he sustained an emotional condition which he attributed to his federal employment. He attributed his emotional condition to: Having to drive eight hours to a temporary duty site after working an eight-hour day, being harassed for filing an Equal Employment Opportunity (EEO) complaint alleging discrimination on the basis of race and physical handicap, being dissatisfied with a performance evaluation, being asked to provide documentation for his travel expenses, having his supervisors discuss his medical and leave matters in front of coworkers, having his supervisors tell coworkers not to speak to him because he filed an EEO complaint, being denied training, feeling insecure about keeping his position, being denied leave to seek medical treatment, being denied an appropriate parking spot in consideration of his handicap, being denied a request to take lunch at a time when he could utilize an exercise facility to improve his physical condition relating to his handicap, being harassed regarding his sick leave and being denied a transfer.

In a report dated June 26, 1996, Dr. Louise D. Reynolds, a family practitioner, related that appellant had filed an EEO discrimination complaint against the employing establishment. She noted that appellant had disabilities stemming from old knee injuries, which had been worsened by his work environment and he had also developed neck and back pain due to his job. Dr. Reynolds related that, when she examined him on June 24, 1996, appellant had just returned from a job-related trip, which required that he drive for eight hours after working an eight-hour shift and this contributed to worsening of his neck, back and knee pain. She related that appellant was significantly depressed in reaction to the stressors that he was undergoing at work.

In a memorandum dated September 23, 1996, Alvin Jenkins, a supervisor, advised appellant that he had used an excessive amount of leave and would have to provide additional documentation in the future regarding medical appointments and use of leave.

In a report dated October 10, 1996, Dr. Reynolds noted that appellant had a work-related back injury and since that time had been undergoing increasing demands and unfairness at work causing him a significant amount of emotional distress. She diagnosed depression and reaction to harassment that he was undergoing at work compounded by chronic pain stemming from a back injury sustained in February 1996.

In a statement dated November 6, 1996, Mr. Jenkins denied that appellant had been harassed at work. He stated that he had been charged with "absence without leave" for pay period 18 because he had failed to comply with instructions regarding requests for leave. Mr. Jenkins stated that issues related to appellant's requests for reasonable accommodations for his disabilities were adequately addressed in cooperation with the human resources department on October 17, 1996. Management had requested the necessary supporting documentation from appellant one year earlier but had not received it from him until September 1996.

An EEO counselor's report dated June 25, 1997 related that appellant had alleged workplace discrimination based upon physical handicap, reprisal and hostile environment and had requested a change in duty location. The counselor related that the employing establishment felt that it had addressed appellant's complaints and his request for reassignment was unreasonable and would not be granted. The counselor provided details of her investigation of appellant's complaint, which included appellant's specific allegations, witness statements and responses from his supervisors regarding the allegations.

In a memorandum dated July 9, 1997, supervisor Paul Washington recommended that appellant seek assistance from the Employee Assistance Programs due to excessive leave usage and unreliable job performance.

By decision dated September 20, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that he sustained an emotional condition causally related to factors of his employment.

By decisions dated March 2 and May 21, 1998, the Office denied modification of its September 20, 1997 decision.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an emotional condition in the performance of duty causally related to factors of his employment.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation

Act.¹ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

In this case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether these alleged incidents and conditions are covered employment factors under the terms of the Act.

Regarding appellant's allegations that the employing establishment gave him an unfair performance evaluation, asked him to provide documentation for his travel expenses and denied him training, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, and thus, do not fall within the coverage of the Act.⁷ Although such matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁸ However, the

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470 (1993).

⁵ See *Margaret S. Krzycki*, 43 ECAB 496 (1992); *Norma L. Blank*, 43 ECAB 384 (1992).

⁶ *Margaret S. Krzycki*, *supra* note 5.

⁷ See *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁸ *Id.*

Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.⁹ In this case, there is insufficient evidence that the employing establishment erred or acted abusively in its handling of these administrative and personnel matters. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegation of denial of a requested transfer, the Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.¹⁰ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegation that he developed stress due to insecurity about maintaining his position, the Board has held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.¹¹

Appellant has also alleged that harassment and discrimination on the part of his supervisors contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹² However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹³

In this case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors.¹⁴ Appellant alleged that he was harassed due to his race and a physical handicap, that supervisors discussed medical and leave matters in front of his coworkers, that his supervisors told coworkers not to speak to him, that he was denied an appropriate parking spot in consideration of his handicap, that he was denied his request to take lunch at a time when he could utilize an exercise facility to improve his physical condition relating to his handicap, that he was harassed regarding his sick leave, that he was required to drive eight hours to a temporary duty site after working a full day and that he was

⁹ *Id.*

¹⁰ *Donald W. Bottles*, 40 ECAB 349 (1988).

¹¹ *See Artice Dotson*, 41 ECAB 754 (1990).

¹² *David W. Shirey*, 42 ECAB 783 (1991); *Kathleen D. Walker*, 42 ECAB 603 (1991).

¹³ *Jack Hopkins, Jr.*, 42 ECAB 818 (1991).

¹⁴ *See Joel Parker, Sr.*, 43 ECAB 220 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

denied a request for leave to seek medical treatment. Although appellant filed an EEO complaint regarding his allegations of discrimination and harassment, the record shows that there has been no resolution to this complaint and, therefore, no findings that the employing establishment harassed or discriminated against appellant. Appellant has provided insufficient corroborating evidence to establish that he was harassed or discriminated against by the employing establishment. Thus, appellant has not established a compensable employment factor under the Act in this respect.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.¹⁵

The decisions of the Office of Workers' Compensation Programs dated May 21 and March 2, 1998 and September 20, 1997 are affirmed.

Dated, Washington, DC
October 6, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹⁵ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki, supra* note 5.